

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

Turtle Mountain Band of Chippewa Indians,
Spirit Lake Tribe, Wesley Davis, Zachery S.
King, and Collette Brown

Plaintiffs,

vs.

Alvin Jaeger, in his official capacity as
Secretary of State of North Dakota,

Defendant.

Case No. 3:22-cv-00022

DEFENDANT’S ANSWER

Defendant Alvin Jaeger, in his official capacity as Secretary of State of North Dakota (“Defendant”), for his Answer to *Complaint For Declaratory And Injunctive Relief* (“Complaint”) (Doc. 1), states as follows:

1. Except as specifically admitted or qualified, the Defendant denies each and every allegation in the Complaint.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

2. With respect to the allegations contained in the unnumbered first paragraph in the Complaint, Defendant admits Plaintiffs have filed this action pursuant to 52 U.S. Code § 10310 and 42 U.S.C. § 1983. Defendant denies the remaining allegations contained in the unnumbered first paragraph in the Complaint and specifically denies any violation of federal law or other alleged wrongdoing.

INTRODUCTION

3. With respect to the allegations contained in paragraph 1 of the Complaint, Defendant asserts that House Bill No. 1504 (“HB 1504”) was signed by Governor Doug Burgum

on November 11, 2021, and became law on November 12, 2021 when it was filed by Defendant. Defendant admits HB 1504 redrew North Dakota's state legislative districts to account for population shifts captured by the 2020 U.S. Census.

4. Defendant denies the allegations contained in paragraph 2 of the Complaint.

5. With respect to the allegations contained in paragraph 3 of the Complaint, Defendant denies North Dakota has a tradition with respect to state legislative districts. Defendant admits the remaining allegations contained in paragraph 3 of the Complaint.

6. With respect to the allegations contained in paragraph 4 of the Complaint, Defendant admits the residents of House District 4A and House District 9A each elect a single representative to the North Dakota House of Representatives. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 4 of the Complaint.

7. Defendant admits the allegations contained in paragraphs 5 and 6 of the Complaint.

8. Defendant denies the allegations contained in paragraphs 7, 8, and 9 of the Complaint. Defendant specifically denies any violation of federal law or other alleged wrongdoing. Defendant further denies Plaintiffs are entitled to the relief requested.

JURISDICTION AND VENUE

9. With respect to the allegations contained in paragraphs 10 and 11 of the Complaint, Defendant denies the Court has subject matter jurisdiction because, among other reasons, no private right of action exists for Plaintiffs to pursue their claims in this Court under Section 2 of the Voting Rights Act, under 42 U.S.C. § 1983, or under any other federal law plead by Plaintiffs.

10. Defendant admits the allegations contained in paragraphs 12 and 13 of the Complaint.

PARTIES

Plaintiff – Spirit Lake Tribe (Mni Wakan Oyate)

11. With respect to the allegations contained in paragraph 14 of the Complaint, Defendant admits Plaintiff Spirit Lake Tribe is a federally recognized Tribe. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 14 of the Complaint.

12. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 15 of the Complaint.

13. With respect to the allegations contained in paragraph 16 of the Complaint, Defendant admits the Spirit Lake Reservation is in east central North Dakota. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 16 of the Complaint.

14. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 17 of the Complaint.

15. Defendant admits the allegations contained in paragraph 18 of the Complaint.

Plaintiff – Turtle Mountain Band of Chippewa Indians

16. With respect to the allegations contained in paragraph 19 of the Complaint, Defendant admits Plaintiff Turtle Mountain Band of Chippewa Indians is a federally recognized Tribe. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 19 of the Complaint.

17. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 20 of the Complaint.

18. With respect to the allegations contained in paragraph 21 of the Complaint, Defendant admits the Turtle Mountain Reservation is in Rolette County, North Dakota in north central North Dakota. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 21 of the Complaint.

19. With respect to the allegations contained in paragraph 22 of the Complaint, Defendant admits that HB 1504 places the Turtle Mountain Reservation in Senate District 9 and House District 9A. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 22 of the Complaint.

20. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 23 of the Complaint.

Individual Voter Plaintiffs

21. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 24 of the Complaint.

22. Defendant denies the allegations contained in paragraph 25 of the Complaint. Defendant specifically denies any violation of federal law or other alleged wrongdoing.

23. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 26, 27, and 28 of the Complaint.

Defendant

24. With respect to the allegations contained in paragraph 29 of the Complaint, Defendant admits he is sued in his official capacity as Secretary of State of North Dakota. With respect to Defendant's responsibilities as Secretary of State of North Dakota, Defendant asserts the cited statutes and other applicable statutes speak for themselves.

LEGAL BACKGROUND

25. With respect to the allegations contained in paragraphs 30, 31, 32, 33, 34, 35, 36, and 37 of the Complaint, Defendant asserts the cited statutes, cases, and other legal authorities speak for themselves. Defendant specifically denies any violation of federal law or other alleged wrongdoing.

FACTS

26. With respect to the allegations contained in paragraph 38 of the Complaint, Defendant asserts the map of North Dakota reservations speaks for itself. Defendant admits the remaining allegations contained in paragraph 38 of the Complaint.

27. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 39 and 40 of the Complaint. Defendant asserts the 2020 U.S. Census data speaks for itself.

28. With respect to the allegations contained in paragraph 41 of the Complaint, Defendant asserts the North Dakota Legislature commenced the redistricting process in July 2021. Defendant is without sufficient knowledge or information to either admit or deny the redistricting was “driven” by the Interim Redistricting Committee. Defendant admits the remaining allegations contained in paragraph 41 of the Complaint.

29. Defendant admits the allegations contained in paragraph 42 of the Complaint.

30. Defendant denies the allegations contained in paragraph 43 of the Complaint.

31. With respect to the allegations contained in paragraph 44 of the Complaint, the testimony before the Interim Redistricting Committee speaks for itself.

32. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 45 of the Complaint.

33. With respect to the allegations contained in paragraph 46 of the Complaint, Defendant is without sufficient knowledge or information to either admit or deny the Interim Redistricting Committee's Final Proposed Statewide Plan, approved and recommended to the Legislative Management at the September 28-29, 2021 meeting, was the first indication of the Interim Redistricting Committee's intent to split District 9 into two house subdistricts. Defendant admits the Final Proposed Statewide Plan included 47 state legislative districts, with two divided into single-member state house subdistricts, Districts 4 and 9.

34. With respect to the allegations contained in paragraph 47 of the Complaint, Defendant is without sufficient knowledge or information to either admit or deny the location of the Turtle Mountain Band of Chippewa Indians trust lands or members. Defendant admits the remaining allegations contained in paragraph 47 of the Complaint.

35. Defendant admits the allegations contained in paragraph 48 of the Complaint.

36. With respect to the allegations contained in paragraph 49 of the Complaint, Defendant is without sufficient knowledge or information to either admit or deny that officials from the Spirit Lake Tribe and Turtle Mountain Band of Chippewa Indians made any determination. Defendant specifically denies any violation of federal law or other alleged wrongdoing. Defendant further denies Plaintiffs are entitled to the relief requested.

37. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 50, 51, and 52 of the Complaint. The letter attached to the Complaint as *Exhibit 1* speaks for itself. Defendant specifically denies any violation of federal law or other alleged wrongdoing.

38. With respect to the allegations contained in paragraph 53, 54, and 55 of the Complaint, Defendant admits the Joint Redistricting Committee held a hearing on November 8,

2021 during the special legislative session. The testimony and actions that occurred during the hearing speak for themselves.

39. With respect to the allegations contained in paragraph 56 of the Complaint, Defendant admits the Joint Redistricting Committee and the Senate did not adopt the Marcellais amendment. Defendant asserts that on November 9, 2022, the House of Representatives debated and voted in favor of HB 1504. Defendant further asserts that on November 10, 2021, the Senate debated and voted in favor of HB 1504. Defendant further asserts that HB 1504 was signed by Governor Doug Burgum on November 11, 2021 and became law when filed by Defendant on November 12, 2021.

Native Americans' Voting Strength Is Diluted by the Configuration of Districts 9A, 9B, and 15

40. Defendant denies the allegations contained in paragraph 57 of the Complaint.

41. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 58, 59, and 60 of the Complaint relating to the voting-age population of Native Americans. Defendant denies the Native American populations have been “cracked”. Defendant specifically denies any violation of federal law or other alleged wrongdoing.

Gingles Prong 1: Native American Voters Form a Geographically Compact Majority In an Alternative District with Two State House Seats

42. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 61, 62, 63, 64, 65, and 66 of the Complaint. Defendant denies Plaintiffs are entitled to the relief requested.

Gingles Prong 2: Voting in the Region is Racially Polarized, with Native American Voters Demonstrating Political Cohesion

43. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 67, 68, and 69 of the Complaint.

Gingles Prong 3: White Bloc Voting Usually Defeats Native American Preferred Candidates

44. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 70, 71, and 72 of the Complaint.

The Totality of Circumstances Demonstrates that Native American Voters Have Less Opportunity than Other Members of the Electorate to Participate in the Electoral Process and Elect Representatives of Their Choice

45. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 73 of the Complaint.

Exclusion of Native Americans from the 2021 Redistricting Process

46. Defendant denies the allegations contained in paragraph 74 of the Complaint.

47. With respect to the allegations contained in paragraph 75 of the Complaint, Defendant admits the Interim Redistricting Committee and the Joint Redistricting Committee did not hold committee hearings on tribal lands. Defendant is without sufficient knowledge or information to either admit or deny the Tribal Nations within North Dakota's borders made repeated requests for committee hearings on tribal lands. Defendant asserts that the Interim Tribal and State Relations Committee did hold multiple hearings regarding redistricting on tribal lands. Defendant denies the remaining allegations contained in paragraph 75 of the Complaint.

48. Defendant denies the allegations contained in paragraph 76 of the Complaint.

49. With respect to the allegations contained in paragraph 77 of the Complaint, Defendant asserts the testimony at the Joint Redistricting Committee hearing speaks for itself.

50. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 78 and 79 of the Complaint. Defendant asserts the statements by legislators at the Joint Redistricting Committee hearing speak for themselves.

51. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 80 of the Complaint. Defendant asserts the statements by legislators at the Interim Tribal and State Relations Committee hearing speak for themselves.

52. Defendant denies the allegations contained in paragraph 81 of the Complaint.

Discrimination in Voting Against Native Americans

53. With respect to the allegations contained in paragraphs 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, and 95 of the Complaint, Defendant asserts the cases and legal authorities cited speak for themselves. Defendant specifically denies any violation of federal law, any violation of the Constitution, or other alleged wrongdoing.

Historic Discrimination Against Native Americans in Other Areas

54. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, and 106 of the Complaint.

Modern Effects of Discrimination

55. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, and 123 of the Complaint. Defendant specifically denies any violation of federal law or other alleged wrongdoing. Defendant further denies Plaintiffs are entitled to the relief requested.

CLAIM FOR RELIEF

COUNT I

Section 2 of the Voting Rights Act, 52 U.S.C. § 10301

56. With respect to the allegations contained in paragraph 124 of the Complaint, Defendant reasserts all of the above denials, admissions, and qualifications.

57. With respect to the allegations contained in paragraph 125 of the Complaint, Defendant asserts that Section 2 of the Voting Rights Act speaks for itself.

58. Defendant denies the allegations contained in paragraphs 126, 127, and 128 of the Complaint.

59. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 129 of the Complaint.

60. Defendant denies the allegations contained in paragraphs 130 and 131 of the Complaint.

AFFIRMATIVE DEFENSES

61. The Complaint fails to state a claim upon which relief may be granted.

62. Plaintiffs lack standing to bring the claims in the Complaint.

63. The Court lacks subject matter jurisdiction.

64. No private right of action exists for Plaintiffs to pursue their claims under Section 2 of the Voting Rights Act, under 42 U.S.C. § 1983, or under any other federal law plead by Plaintiffs.

65. Defendant is immune from Plaintiffs' claims pursuant to the Eleventh Amendment to the United States Constitution and other applicable law.

66. Defendant denies any alleged violation of the Voting Rights Act, and any other applicable legal authority.

67. Plaintiffs have not been deprived of any constitutional, civil, statutory, common-law or other right.

68. Plaintiffs are not entitled to the requested relief.

69. Pending completion of discovery, the Defendant asserts and incorporates by reference all affirmative defenses available pursuant to Rules 8, 9, and 12 of the Federal Rules of Civil Procedure.

WHEREFORE, the State Defendants respectfully request that the Complaint be, in all things, dismissed and that the State Defendants be awarded costs, disbursements, and any other relief the Court deems just and equitable.

Dated this 21st day of July, 2022.

By: /s/ David R. Phillips

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S ANSWER** was on the 21st day of July, 2022, filed electronically with the Clerk of Court through ECF:

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